

HOUSE of LORDS.

Sir *John Eden*, Baronet, and others, as standing (by Revivor) in the Place of *Morton Davison* Esquire, lately deceased, } Appellant.

The Right Honourable *John* Earl of *Bute*, The Right Honourable *Henry* Lord *Ravenfworth*, The Right Honourable *John* Bowes, Earl of *Strathmore*, and The Right Honourable *Mary Eleanor* Bowes, Countess of *Strathmore*, his Wife, The Right Honourable *John* Bowes, commonly called Lord *Glamis*, an Infant, by the said Earl of *Strathmore*, his Father and Guardian, and *Mary* Bowes Widow, } Respondents.

The RESPONDENT'S CASE upon the two Appeals against the Decree of the 9th of *December* 1773, and the Order of the 21st of *January* 1774.

WILLIAM DAVISON Esquire was in Possession as *Tenant for Life*, with Remainder to the late Appellant in Tail, of diverse inclosed Lands in *Tanfield* and *South-Causley* in the County of *Durham*, and was seised in Fee Simple of the Manor of *Beamish*, alias *Beamish Park*, and of diverse Lands in *Beamish* and *Pockerly*, and of the Coal-Mines in and under the same.

1st January 1723.
Lease from William Davison Esquire to Sidney Wortley Esquire and others of his Coal-mines within his Wastes South of Beamish Burn, or the River Team, for 41 Years from Martinmas, 1722.

The said *William Davison*, by Indenture of Lease, demised to the Honourable *Sidney Wortley*, alias *Montagu*, *Edward Wortley* Esquire, and *James Montagu* Esquire, their Executors, Administrators and Assigns, All his Collieries and Coal-Mines, opened and not opened, within and under all and every or any the Moors, Wastes and Commons of or belonging to him the said *William Davison*, on the South Side of *Beamish-Burn* or the River *Team*, in the County of *Durham*, together with Liberty to dig, sink, win, work and make Pits, Trenches and Groves, and to drive Drifts, Water-gates and Water-courses for the winning, working and getting of Coals out of the said Coal-Mines, and to lead and carry away the Coals to be won and wrought out of the said Collieries, in, through, over and along all the Moors, Wastes, Commons, Lands and Grounds of the said *William Davison*, the nearest and most convenient Way to the River *Tyne*, or elsewhere, and in and upon the said Moors and Commons to erect and build, lay and make Waggon-ways, Branches, Bridges, Mounts or other Coal Ways, and to repair the same, and to use all of the said Ways with Waggon, Carts, Horses, or on foot, or otherwise, and to drive Drifts, put down Staples, or carry up Levels, and do what should be needful to be done for winning and getting of Coals out of the said Collieries, To hold from *Martinmas* Day then last for Forty-one Years from thence next ensuing, at a certain yearly Rent of 50*l*. whether the said Collieries should be wrought or not, and such other Rents as are thereby reserved; and the Lessees thereby covenanted to work the said Collieries and Coal-Mines fairly and orderly according to the best and most usual Method of working Collieries; and it was thereby declared, that the Lessees might be at Liberty to determine the said Lease on giving Twelve Months Notice in Writing to the said *William Davison*, his Heirs or Assigns, upon any 11th of *November*.

1st January 1723.
Lease from said William Davison to same Lessees of his Coal-mines within his inclosed Lands of Beamish alias Beamish Park, for 41 Years.

The said *William Davison*, by another Indenture of Lease, demised unto the said *Sidney Wortley*, alias *Montagu*, *Edward Wortley* and *James Montagu*, their Executors, &c. All his Collieries and Coal-mines, opened and not opened, lying within the inclosed Grounds of the said *William Davison* at *Beamish*, alias *Beamish-Park*, in the said County, with such Liberties as were contained in the before-mentioned Indenture of Demise of the Collieries South of *Beamish-Burn*, To hold from *Martinmas-Day* then last for Forty-one Years, at and under a certain yearly Rent, whether the said Collieries should be wrought or not, and the other Rents thereby reserved.

1st January 1723.
Lease from the said William Davison to the same Lessees of his Coal-mines within his Grounds situate at *South Causley* and *Tanfield* for the like Term of 41 Years, if Mr. Davison should so long live.

The said *William Davison*, by another Indenture of Lease, demised unto the same Lessees All his Collieries and Coal-Mines, opened and not opened, within and under all or any of the Lands, Closes or Grounds of the said *William Davison*, at *South-Causley* and *Tanfield*, in the said County, together with the like Liberties and Privileges as are mentioned and contained in the last-mentioned Leases, To hold from *Martinmas* then last for Forty-one Years, if the said *William Davison* should so long live, at and under the Rents thereby reserved, and subject to the like Covenants as are contained in the said other Leases.

The said *Sidney Wortley*, alias *Montagu*, and *Edward Wortley* became intitled to the said *James Montagu's* Share and Interest in the said Coal-Mines and Premises before the Time of entering into the Articles next herein-after mentioned.

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27th June, 1726.
Articles of Partnership.

By Articles of Agreement quadrupartite, between *Sidney Wortley* and *Edward Wortley* and *Thomas Ord*, of the first Part; the Respondent Lord *Ravenworth* (then Sir *Henry Liddel* Baronet, an Infant) *George Liddell*, Esq; for himself, and as Guardian of the said Sir *Henry Liddell*, of the second Part; *George Bowes* Esquire, of the third Part; and *William Cotefworth* Esquire of the fourth Part; reciting that the said Parties were respectively seised of or interested in divers Coal-Mines, with Lands, Grounds, Way-leaves, Staith-rooms and Privileges, necessary and convenient for bringing Coals to the navigable Rivers near the same; and that they had for their respective Interests agreed to join some of their Collieries, and to enter into a Partnership for purchasing or taking other Collieries, and for the winning and working of Coals thereout, and to exchange Benefits and Kindnesses with each other upon a lasting Foundation, in manner therein mentioned, the said Parties for themselves and their respective Heirs, Executors, Administrators and Assigns, covenanted with each other, their respective Heirs, Executors, Administrators and Assigns, that all Collieries and Parts of Collieries belonging to them in the said County of *Durham*, and lying above *Newcastle Bridge*, should be divided into three equal Shares, (except as therein is excepted) to be held by them in Partnership in such Shares as therein mentioned, for *Ninety-nine Years*, from the *Eleventh of November then next*, as well under the Rents and Covenants to be thenceforth paid and performed for the said Collieries to be so held in Thirds respectively, by Virtue of any Agreement, Lease or Leases thereof made, as by and under the Rents and Covenants therein-after agreed, to be performed for the same: And the said Partners in Thirds for themselves and their respective Heirs, Executors, Administrators and Assigns, thereby mutually covenanted and agreed with each other, and with their respective Heirs, Executors, Administrators and Assigns, that they the said Partners in Thirds should, during the said *Ninety-nine Years*, mutually grant Way-leaves, with Liberty of making Waggon-ways each to the other, upon and through all Lands, Grounds or Commons that they were or should be possessed of or interested in for their several Coal-Mines, and also for the said excepted Collieries belonging to any of the Parties to the said Agreement, by Waggon or other Carriages between the Pits thereof, and the several and respective Coal-Staiths which they or any of them had or should have on the Rivers *Tyne*, *Darwent* and *Team*, or any of them, and Drifts, Water-courses, and other Conveniences necessary for the said Partnership Collieries in Thirds, and also for the said excepted Collieries, without paying any Consideration for the same, other than their proportionable Part of reasonable Damages for Spoil of Grounds and Trespasses by Cattle that might thereby be occasioned: And it was thereby further agreed that the said Partners in Thirds, or their respective legal Representatives, should also pay their proportionable Shares of all the dead Rents of or for the Collieries, Liberties, and Privileges, farmed of the said *William Davison*, *Mr. Ralph Clavering Junior*, and *Mr. Thomas Dawson*, of *Tanfield*, respectively, from the respective Times of the taking the same to Farm, and should also pay their like proportionable Shares of the dead Rents of all Collieries, during the said *Ninety-nine Years*, to be taken for the mutual Benefit of the said Partners in Thirds and their several legal Representatives: And the said Partners further agreed, that the Collieries thereafter to be bought or taken, as also all Collieries under any Lands or Grounds thereafter to be purchased, or which should otherwise accrue to them in the Counties of *Durham* and *Northumberland*, or either of them, above *Newcastle Bridge*, and also the Colliery under the Lands and Grounds at *Shield-Raw*, then lately purchased by the said *George Bowes*, or in Trust for him, of *Mr. Robert Robinson*, and the Colliery under the Moor or Common called *Kibbleworth*, also *Blackburn-Fell*, and also *Dipton* Colliery, in case the same was or should be taken, should all of them, (except such Collieries as lay within the inclosed Lands of the Lordship or Township of *Ravenworth*, *Lamesley*, *Eighton*, *Kibbleworth* and *Ravenworth Town Fields*) be held in Thirds by the said respective Partners during such *Ninety-nine Years*. And it was thereby further agreed, that if any Collieries should be taken by any of them the said Partners during the said *Ninety-nine Years* and should at the End thereof not be wrought, and dead Rents be paid for them, that such of the said Partners in Thirds, or their legal Representatives, as should be capable of working and leading such Collieries, should pay back to such others of the said Partners in Thirds, or their legal Representatives, who for want of Way-leaves and other Conveniences, for leading and vending such their Coals, could not enjoy the same, all such Sums as they should disburse on Account of dead Rents or other Expences, with Interest: And it was thereby agreed that no Benefit should be had by Survivorship.

At that Time the Partners had a subsisting Lease from *Ralph Clavering*, of *Cawsey*, of Way-leave and Water-courses, in and through North and Middle *Cawsey*, for certain Collieries within the Township of *Tanfield*, dated the Sixteenth of *October* One Thousand Seven Hundred and Twenty-four, To hold from May-Day, One Thousand Seven Hundred and Twenty-four, for the Term of *Thirty Years*; and after the Execution of the said Articles of Partnership, the said then Partners, having a View to the taking and working of diverse Collieries lying to the South and West of the said *William Davison's* Lands, at *Beamish*, *South-Cawsey* and *Tanfield*, in order to secure a Passage for the Coals which they might have Occasion to bring to the River *Tyne* from any Collieries lying either South or West of the said *William Davison's* Lands at *Beamish*, it became prudent to obtain Way-leaves through the said *William Davison's* Lands at *Beamish*, and also through his Lands at *Tanfield* and *South-Cawsey*, and through the Lands of *Ralph Clavering* at *Cawsey*, for a longer Term than *Thirty Years*, and through the Lands of *Thomas Dawson* of *Tanfield*, for the same Term of Years as the said Partnership was to subsist; and accordingly they made Applications and Proposals to the said *Ralph Clavering*, to surrender to him the said Lease of the Sixteenth of *October* One Thousand Seven



Proviso.

said Term, then the yearly Rent of 200*l.* for and during the then said Residue and Remainder of the said Term, at the Rent Days aforesaid: Proviso, and it is agreed to be the true Intent and Meaning of the Parties, That if the Lessees shall, at any Time before the End and Expiration of the said 15 Years, lead any Coals in, through, over or along any of the Lands or Grounds of the Lessor at Beamish, alias Beamish Park, Pockerley, Tanfield and South Causey, or any of them, from any other Coal-Mines or Collieries than such as they now hold by Lease from the said Lessor, that then and in such Case, they, the said Lessees, from such the Time of their leading Coals from such other Collieries, shall pay the Lessor during the Residue of the Term, 200*l.* per Annum, at the Days aforesaid; the first Payment to be made at such of the said Rent Days as shall happen next after the leading of such other Coals as aforesaid: And it is further agreed, that in case an Act of Parliament shall not or cannot be obtained for enlarging the Term of 21 Years, agreed to be granted of the Way-leave and Liberties in Tanfield and South Causey Grounds aforesaid, to the said Term of 98 Years, or in case no further Lease or Grant thereof shall be made to the said Lessees by the said William Davison, his Heirs or Assigns, so as the yearly Rent of 100*l.* per Annum therefore agreed to be reserved, or any greater Rent that may therefore happen to be reserved, shall not be, or continue to be paid or payable by the said Lessees, during all the said Term of 98 Years; that then, from the Time such yearly Rent of 100*l.* per Annum, for the Way-leave and Liberties in Tanfield and South Causey aforesaid, or such greater Rent as aforesaid, shall cease and determine to be paid or payable by the said Lessees; there shall be paid and payable by them to the said Lessor, his Heirs or Assigns, for the then Residue of the said Term of 98 Years, agreed to be granted of the Way-leaves and Liberties at Beamish, alias Beamish Park, and Pockerley aforesaid, and for and in respect thereof, over and besides the aforesaid yearly Rent of 200*l.* the further Rent of 100*l.* at the Days aforesaid; the like Liberty to determine the Term, and the like Covenants for securing the Payment of the several Rents and Sums of Money agreed to be paid, and for preventing Trespases and Damage, and making Satisfaction for such Damage, is agreed to be contained in this Lease, as are agreed to be contained in the other Lease to be made of the Way-leave and Liberties in Tanfield and South Causey aforesaid. We, the said William Davison, George Liddell, George Bowes, Edward Wortley and Thomas Ord, do all of us approve of and confirm the Agreements herein before contained; and we consent that the several Leases therein mentioned shall, with all convenient Speed, be drawn and put into Form, ingrossed, sealed and duly executed by us the said Parties. Witness our Hands, the 24th Day of December 1728. Signed by Geo. Liddell, G. Bowes, Will. Davison and Ralph Fetherston, for Mr. Edward Wortley and Mr. Thomas Ord.

Reasons why the Heads of Agreement were not signed till 24th December 1728.

The said Heads of Agreement of 17th April 1727, were not signed by any of the Parties for above a Year and eight Months afterwards, by reason that the Liberties of Way-leave intended to be taken to farm of the said William Davison, could not be of any Use to the said Partnership, without having Way-leave also through the Lands of the said Ralph Clavering, called North and Middle Causey, and that the said then Partners did not obtain a Lease of Way-leave for the Term for which the said Partnership Articles were to subsist over the said Ralph Clavering's said North and Middle Causey, till the 1st of October 1728; but the said Partners having obtained such Grants and Demises from the said Thomas Dawson and Ralph Clavering as after mentioned, the said Heads of Agreement were, on the 24th of December 1728, signed by the said George Liddell, George Bowes and William Davison, and by the said Ralph Fetherston for the said Edward Wortley and Thomas Ord, which said Ralph Fetherston was a principal Agent for the said Edward Wortley and Thomas Ord, and was properly authorized to sign and confirm the said Heads of Agreement, which were made in Trust, and for the Benefit of the said Partnership, and for the Term of 98 Years, in order to correspond in Duration of Time with the said Articles of Partnership; and also to correspond in Duration of Time, and in all Circumstances, with the like Privileges which the Parties to the said Articles intended to procure from the said Ralph Clavering and others, and without which, the Liberties intended to be contracted for by the said Heads of Agreement, could be of little or no Use to the said Partnership.

Mr. Dawson's Demise to the Partners, 1st June 1728.

By Articles of Agreement indented, dated the 1st of June 1728, and made between the said Thomas Dawson, of the one Part, and the said Ralph Fetherston *halgh*, on the Behalf of the then Partners, of the other Part, the said Thomas Dawson, for the Considerations therein mentioned, did, among other Things, agree to demise and grant, and did thereby demise and grant unto the said Partners, their Executors, Administrators and Assigns, Liberty to make and have a sufficient Water-gate and Water-course, for conveying of Water from the Coal-Mines or Collieries, within or under the Lands and Grounds of the said William Davison in Tanfield aforesaid, or from any other Coal-Mines or Collieries whatsoever, within or under any other Lands or Ground, lying beyond or Westward from the said Mr. Davison's Lands and Grounds at Tanfield aforesaid, in, through or under any of the said Lands or Grounds of him the said Thomas Dawson at Tanfield and Beckley aforesaid, or either of them, or in or through the Coal-Mines and Collieries aforesaid of the said Thomas Dawson, or the Workings thereof, with Liberty to make Drift or Drifts, Outstroke or Outstrokes, from the Coal-Mines and Collieries aforesaid, of him the said Thomas Dawson, to and into that Part of the said Coal-Mines and Collieries of the said William Davison, which lies between Houghwell, alias Howell Bridge, and the Easter Calf Garth, then planted with Fir Trees, and adjoining to the Mansion-house of Tanfield, belonging to the said Thomas Dawson, and all convenient and necessary Liberties for the repairing, keeping open, and

Seven Hundred and Twenty-four, and to him the said *Thomas Dawson* and *William Davison*, for taking to Farm of them the said *Ralph Clavering*, *Thomas Dawson* and *William Dawson*, Liberties of Way-leave and Water-courte through their said respective Lands, for the Benefit of the said Partnership, for the same Term of Years as the said Partnership Articles were to subsist, and having authorised Mr. *Ralph Fetherstonbalgh* to treat for the same, and for a Lease of Mr. *William Davison's* Colliery at *Pockerley*; thereupon the said Mr. *Davison* and Mr. *Fetherstonbalgh*, on Behalf of the said Partners, came to an Agreement with the said Mr. *Davison*, which was reduced into Writing, and was as follows:

17th April 1727.
Heads of Agreement.

HEADS of an Agreement, made the Seventeenth of April, 1727, between *William Davison* Esq; of the one Part, and *Ralph Fetherstonbalgh* for and on Behalf of *George Liddell*, Esq; *George Bowes*, Esq; *Edward Wortley*, Esq; and *Thomas Ord*, Esq; of the other Part; Mr. *Davison* to make and execute a Lease of the Colliery under the Lands of *Pockerley* in the County of *Durham*, with the usual Liberties granted with Collieries, unto them the said Mr. *Liddell*, Mr. *Bowes*, Mr. *Wortley*, and Mr. *Ord*, for the Term of Forty-One Years from *Martinmas*, 1728, the Rent to be 100 l. per Annum certain, whether Coals shall be wrought or not, and the further Rent of 14 s. per Ten (such Measure as is granted by the said Mr. *Davison* of his Colliery at *Beamish*, alias *Beamish Park*) for every Ten that shall yearly exceed One Hundred and Forty-Three Tens, the Rent certain to be paid at *May-Day* and *Martinmas* by equal Portions, and the Surplus or further Rent of 14 s. per Ten to be paid at *Martinmas* in each Year of the Term. What Coals shall be wrought and led short in any Year of the Term of the said Rent certain of 100 l. per Annum to be made good out of the Surplus Workings, and Leadings, of the said Colliery in any succeeding Year of the Term, without any further Rent to be paid for the same than the said Rent certain, the Lessees to be at Liberty to determine the Term upon Twelve Months Notice, at the End of the Twentieth Year of the Term, or upon Twelve Months Notice, to be given upon the Eleventh Day of *November*, in any then succeeding Year of the Term, with such further Provisoes to be therein contained in Case of civil Wars, or in Case of the Mines being wrought out, or being overburthened with Water or Styth, as are contained in the said Mr. *Davison's* Lease of *Beamish*, alias *Beamish Park* Colliery, and also such other Covenants to be contained in the Lease to be made pursuant to this Agreement, as are contained in the said Lease of *Beamish*, alias *Beamish Park* Colliery.

The said Mr. *Davison* is also to make and execute a Lease to them the said Lessees, of Way-leave for Carts, Wains or other Carriages, and Liberty of laying, making and repairing of one or more convenient Waggon Way or Waggon Ways, or other Way or Ways, in, through, and over, any of his Lands and Grounds of *Tanfield* and *South Causey* in the said County of *Durham*, for the leading and conveying of Coals from any of their Coal Mines or Collieries, so as such Waggon Way or Ways, or other Way or Ways, exceed not 16 Yards in Breadth, including Gutters (except in hollow Places, where Cuts, Batteries, Bridges or Mounts shall be necessary to be made); and also Liberty of making and sinking of Staples or Pits, and of driving of Drift or Drifts, and of making Water Gates or Water Courses, and of making or erecting of Water Engines, or other Engines, in, upon or under any of the said Lands or Grounds, for the drawing of Water, or conveying of Water, Air and Styth to or from any of the Coal-Mines or Collieries of them the said Lessees, with all such other Liberties as may or shall be necessary for wining, working and carrying on of any Coal-Mines or Collieries of them the said Lessees, or leading of Coals or other necessary Materials to or from the same, to hold for the Term of 21 Years from the 1st of May 1728; the Rent to be 100 l. per Annum, and to be paid at *May-day* and *Martinmas* by equal Portions; Mr. *Davison*, at any time during his Life, upon the Request, and at the Charges of the Lessees, to grant a new Lease, for any Term, not exceeding 21 Years from the making thereof, under the like yearly Rents and Covenants; and further, if thereunto requested, to consent and to give any Assistance in his Power for obtaining, at the Charges of the Lessees, an Act of Parliament for enlarging the Term hereby agreed to be granted, and making the same the Term of 98 Years from the said 1st Day of May 1728; the said Lessees to covenant to make Gates, Posts or Rails, or other sufficient Fences, and to find and provide Gatekeepers, to prevent Trespasses by Cattle in any of the Lands of the Lessor, where such Liberties shall be used; and in case of Trespasses for want thereof, to make reasonable Satisfaction, the Damage to be ascertained by two indifferent Persons: Lessees to have Liberty to determine on 12 Months Notice, to be given at the End of the 20th Year of the Term, or upon the like Notice to be given in any following Year, upon the 11th Day of *November* in such following Year; the Lessees also to covenant to pay the Rent reserved, with Liberty of Distress, and of stopping Leadings, or using any of the Liberties granted in case of Nonpayment.

The said Mr. *Davison* is also to grant a Lease to them, the said Lessees, of such Way-leaves and Liberties as aforesaid, in, upon, through and under any of his Lands, Grounds, Moors, Wastes or Commons at *Beamish*, alias *Beamish Park* and *Pockerley*, or any of them, or within the Boundaries, Precincts or Territories of them, or any of them for 98 Years from the 1st of May 1728, under the yearly Rent of one Pepper-corn for the first Ten Years of the Term, to be paid at *Martinmas* in every Year, if demanded; after the End of the first ten Years of the Term, for and during the next Five Years thereof, the yearly Rent of 100 l. per Annum at *May-day* and *Martinmas* in every of the said five Years; and after the End of the first 15 Years of the

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and preserving the said Water-gate or Water-course, To hold to the said then Partners, their Executors, &c. from Martinmas then last, for the Term of 98 Years.

Mr. Clavering's Demise to the Partners, 1st October 1728.

The said *Ralph Clavering*, by Indenture Tripartite, bearing Date the 1st of October 1728, between him the said *Ralph Clavering* of the first Part; *Charles Atkinson* of the second Part; and the then Partners of the third Part; did, by and with the Permission, Licence and Consent of the said *Charles Atkinson*, for the Considerations therein mentioned, demise and grant unto the said then Partners, their Executors, Administrators and Assigns, full Liberty and Authority to make Drifts and Water-courses, and to erect Water Engines, and Fire Engines, and to have and use Way-leave through and over the Lands or Grounds, Moor or Wastes, of or belonging to the said *Ralph Clavering*, in *North Causey*, *Middle Causey*, or elsewhere, within the Parish of *Chester in the Street*, for the obtaining, winning, working, managing and carrying on of the Coal-Mines or Collieries within the Counties of *Durham* and *Northumberland*, or either of them, which the said then Partners, or any of them, then had, or were any Way interested in, or possessed of, or which they or any of them, or any of their Heirs, Executors, Administrators or Assigns should, during the Term thereby granted, be any Way possessed of, or interested or concerned in; and also for the carrying and conveying of Coals with Wains, Carts, Waggon, or any other Carriages, from all and every, or any such Coal-Mines or Collieries, with such Liberties and Privileges as therein mentioned, To hold and enjoy the said Way-leave and Passage, and all other Powers, Liberties and Authorities thereby demised and granted, with their Appurtenances, unto the said then Partners, their Executors, Administrators and Assigns, from the 11th Day of November then next, for the Term of 97 Years, from thence next ensuing, at certain yearly Rents therein mentioned.

13th July 1730.

Lord Ravensworth attained his Age of 21 Years, and confirmed the Articles of Partnership.

The Respondent Lord *Ravensworth* (then Sir *Henry Liddell* Baronet) attained his Age of 21, and by Indenture, dated 17th September following, he confirmed the said Articles of the 27th of June 1726; and the said Partnership has ever since been a subsisting Partnership, and the Respondent the Earl of *Bute* is intitled to one third Part of the said Partnership, the Respondent Lord *Ravensworth* to another third Part, and the Respondent *Mary Bowes*, as the only surviving Executrix and Trustee of the said *George Bowes*, and the Respondents the Earl and Countess of *Strathmore*, in her Right, and Lord *Glamis*, are, under the Will of the said *George Bowes*, intitled to the other third Part thereof.

At the Time of entering into the Heads of Agreement of 17th April 1727, the said Partners were possessed of, or interested in the several Collieries mentioned in the Schedule hereunto annexed, No. 1. and they acquired, after the Date of the said Heads of Agreement, the several Collieries mentioned in the Schedule annexed, No. 2.

By virtue of the said second mentioned Lease of the 1st of January 1723, the Lessees therein named in 1726, began to make a Water-course in the inclosed Lands of the said *William Davison*, on the North and North-west Side of *Beamish Burn*, for the Purpose of winning the said Colliery at *Beamish*; and in 1731 and 1732 the said Water-course was, by the said Partners, extended by Drifts, or Coal Workings, into the said Colliery called *Hedley Fell*, or *Moor Colliery* and *Parkhead Colliery* respectively, for the Use thereof.

By virtue of the said third mentioned Lease of the 1st of January 1723, the then Partners did, in 1729 or 1730, make a Waggon Way through the Lands of the said *William Davison* in *Tanfield*, for the Use of the said *Tanfield Colliery*; and in 1733, they did, by virtue of the said Heads of an Agreement, extend the said Waggon Way into *Tanfield Easter Leigh Colliery*, for the Use thereof.

29th August 1734.

William Davison died.

The said *William Davison* died, leaving *William* his eldest Son and Heir, who thereupon became entitled to the said Manor of *Beamish*, alias *Beamish Park*, and to the said Lands, Wastes and Coal-Mines in *Beamish*, otherwise *Beamish Park*, and *Pockerley*, and leaving the late Appellant, his eldest Son by *Dulcibella* his second Wife, then an Infant, who thereupon became intitled to the said inclosed Lands and Coal-Mines in *Tanfield* and *South Causey*.

The third Lease of 1st January 1723, determined by the Death of the Lessor, and 23d October 1734, Mrs. *Dulcibella Davison* as Guardian of said Appellant then a Minor, granted a further Lease for 7 Years.

The said third mentioned Lease of the 1st of January 1723, determined by the Death of the said *William Davison* the Father, and thereupon the then Partners applied to the said *Dulcibella Davison*, the Mother and Guardian of the late Appellant, for a new Lease of the Premises therein contained, whereupon the said *Dulcibella*, as Testamentary Guardian of the Appellant, then a Minor, by Indenture, dated 23d October 1734, in Consideration of the Rents and Covenants thereby reserved, demised to said Sir *Henry Liddell*, *George Liddell*, Mr. *Wortley*, Mr. *Bowes* and Mr. *Ord*, their Executors, &c. the Collieries and Coal-Mines, open and not open, in and under the Lands or Grounds late of the said *William Davison*, at or within the Township of *Tanfield*, or the Territories thereof, with like Liberties of Way-leave and Water-courses, for winning and working said Collieries in *Tanfield*, as were demised by said Indenture of 1st January 1723, respecting the said Colliery, To hold from the 29th December then next, for seven Years, at the several Rents therein mentioned, and the like Covenants were contained therein as in the said former Lease; and the Lessees further covenanted, that they should not, during the Continuance of that Demise, by their Workmen, or others, without the Consent of the said *Dulcibella*, or of the Appellant, his Heirs or Assigns, thereunto first had and obtained, work or drive any Outstroke or Drift, out of or from the Workings of the said Collieries and Coal-

Mines thereby demised, into the Collieries or Coal-Mines of Dame *Jane Clavering* or *George Pitt* Esquire, or into any other Collieries or Coal-Mines lying contiguous to, or adjoining upon the said Appellant's Lands, except into such Collieries as did or should really and bona fide belong to the said Partners, their Executors, Administrators or Assigns, and not to the said Dame *Jane Clavering* and *George Pitt*, or either of them, their Heirs or Assigns; and further that the said Partners, their Executors, Administrators and Assigns, where the Colliery thereby demised, in any extrem Part thereof, should join on the Collieries and Coal-Mines of the said Dame *Jane Clavering* and *George Pitt*, or any the Collieries or Coal-Mines of any other Person or Persons, other than to them the said Partners, their Executors, Administrators or Assigns; and that they should not in such extrem Part or Parts of the said Colliery thereby demised, work the same to the extrem Part of the Boundary thereof, without the Consent of the said *Dulcibella* and the Appellant, or the one of them, but should in such Part as aforesaid leave a Bulk or Warren of Coal of the Thickness of twelve Yards, for the Security of the Workings of the Colliery and Coal-Mines thereby demised, and for preventing of Water coming into or through the same from the Collieries of said Dame *Jane Clavering* or *George Pitt*, or such other Person or Persons as aforesaid.

In 1737.

In 1739.

The said then Partners, by virtue of the said Heads of Agreement, extended not only the said Water-course into the Appellant's Lands in *Tanfield*, but also the Waggon-way there into a Parcel of Ground, called *Parson's Close*, belonging to the Minister of *Tanfield*, and which the said Partners held under a parole Agreement made with him for the Purpose of winning, working and leading the Coals under the said *Parson's Close*: And in or about 1739, they extended the said Water-course into *Dean's Close*, which they had purchased of *John Hedworth* Esquire, in December 1729, and by means thereof did win the Colliery within the said *Dean's Close*, and did work and lead the Coals of the said Collieries respectively, by means of the said Water-course and Waggon-way respectively, and without any Objection being made by the then Owner of the Appellant's Estate at *Tanfield*, or his Agents, to the said Partners being intitled so to do by virtue of the said Heads of Agreement of the 17th of April 1727; and the said Owner well knew that the said Partners did not become possessed of either of the said Collieries in *Parson's Close* and *Dean's Close* till long after the Execution of the said Heads of Agreement.

The said Partners in pursuance of the said Heads of Agreement made a Waggon-way through the Lands of the said *William Davison* in *South Cawsey*, for the leading and carrying their Coals from the Colliery called *Robinson's Shield Raw* and *South Moor*, in the West Part thereof, but the said last mentioned Waggon-way was at the same Time laid, by virtue of the said Heads of Agreement, for the Use of *Lancaster Moor* or *Lancaster Fell Colliery*; and the said Partners accordingly used and enjoyed the said several Waggon-ways for the Purposes aforesaid; and a Waggon-way was also, by virtue of the said Heads of Agreement, laid by the said Partners in Thirds over the said Waste South of *Beamish Burn*, and over the inclosed Lands of *Beamish* alias *Beamish Park*, for leading the Coals of *Kipbill* and *Stanley Collieries*, and was used accordingly.

15th December 1741.
Nathan Wetherell's Agreement.

By an Agreement in Writing between *Nathan Wetherell* Gentleman, on Behalf of the late Appellant, then a Minor (but who was then 20 Years and above 6 Months old) pursuant to, and by virtue of an Authority or Letter from the said Appellant to the said *Nathan Wetherell* of the one Part, and *Robert Ellison*, *William Leaton* and *Ralph Fetherston*, on Behalf of the then Partners of the other Part, It was agreed that the Appellant should, upon request, make and execute a Lease to the said Partners, their Executors, Administrators and Assigns, of all the Coal-Mines and Collieries within and under the Lands and Grounds of the Appellant, within the said Town, Township or Village of *Tanfield*, and of all and every the Liberties, Powers and Privileges, with their Appurtenances therewith demised and granted by the said Lease of the 23d of October 1734, from the said *Dulcibella Davison*, in as full and ample Manner as the Lessees therein named had theretofore held or enjoyed, or ought to hold or enjoy the same, To hold the same from the 29th of December then next, for the Term of Nine Years, at the certain yearly Rent of 570*l.* and at other yearly Rents therein mentioned, and the said Appellant, by a Memorandum subscribed at the Foot of the said Agreement, and signed by the Appellant upon his coming of Age, allowed of and confirmed the said Agreement.

In April 1743.
William Davison the Son's Death.

The said *William Davison*, the Son, died, and on his Death the said Appellant became intitled to the Inheritance of the inclosed Lands, Commons and Collieries in *Beamish*, otherwise *Beamish Park*, and *Pockerley*.

In 1744.
Water-course made.

The said Partners, by virtue of the Lease of the 1st of January 1723, and of the said Heads of an Agreement of the 17th of April 1727, began to make a Water-course in the Brafs-Thill Seam of Coal near *Beamish Burn*, on the South side thereof, and afterwards made another Drift at a lower Level there to Part of the Coal-Mines in the East Part of *South Moor*, which Water-course was made not only with a View to win and work the said *South Moor Colliery*, but also to win such Part of the said Colliery at *Shield Raw*, as was capable of being won thereby, and any other Collieries which the said Partners might be possessed of, and which might be won by Means of such Water-course; and accordingly in 1754, the said

faid Partners began to work the faid Colliery in *South Moor*, and continued to work the same to the Expiration of the faid Lease in 1764.

4th July 1748.
Sir Thomas Clavering's Lease.

Sir *Thomas Clavering*, by Indenture of Lease, demised to the faid then Partners all his Collieries and Coal-Mines, opened and not opened, within the Lands called *Beckley Farm* and *Andrew's-House Farm*, (except the main Seam of Coal under *Beckley Farm*) for 14 Years from Christmas 1747, at the yearly and other Rents therein mentioned.

24th December 1753.
Thomas Dawson's Lease.

Thomas Dawson Esquire, by Indenture of Lease, demised to the faid Partners, all his Collieries and Coal-Mines, opened and not opened, within his Lands and Grounds at *Kipbill*, with the usual Liberties for working the same for the Term of Sixty-three Years, at a certain yearly Rent and such other Rents as therein mentioned.

8th January 1754.
Lord Widdrington's Lease.

The Honourable *Henry Widdrington*, commonly called Lord *Widdrington*, by Indenture of Lease, demised to the Partners all the Collieries and Coal-Mines, opened and not opened, within his Freehold Lands in the Township of *Stanley*, with the usual Liberties for working the same from *May-day* then next for the Term of Sixty-three Years, at the yearly Rent of 300*l.* whether wrought or not, and several other Rents therein mentioned.

The Partners, by virtue of the faid Heads of Agreement, and with the Privity of the Appellant or his Agents, who from Time to Time attended and examined the Workings carried on by the faid Partners in the Appellant's faid Collieries, extended the faid Water-course into the faid *Kipbill* Colliery, by Means whereof in 1760, the several Seams of Coal therein called the Upper-Main Seam, the Hard-Coal Seam, and the Brags-Thill Seam were won and laid dry; and by virtue of the same Heads of Agreement the faid Partners laid a Waggon-way over the faid Waftes, South of *Beamish Burn*, and over the inclosed Lands of *Beamish*, alias *Beamish Park*, for leading the Coals of and from the faid Collieries, called *Kipbill* and *Stanley* respectively, and the same was used accordingly for that Purpose.

The Respondents used, exercised and enjoyed all the faid Way-leaves, Liberties and Privileges under the faid Heads of Agreement without the least Interruption, till the Beginning of April 1765, when the Respondent, Lord *Ravenworth*, received a Letter from the faid Appellant, intimating that he was desirous that a Lease of Way-leave and Water-course, with proper Covenants, pursuant to the Heads of Agreement, should be made and executed as he found it had not been done, and the faid Partners Workmen had continued (notwithstanding the Lease of *South Moor* Colliery was expired) to lead Coals from the faid *Stanley* and *Kipbill* Collieries along the Waggon-way in *Beamish*, and had also begun to carry up a Water-course in *South Moor*, towards *Shield Raw* Colliery, which he was advised they had not a Right to do, to which the Respondent, Lord *Ravenworth*, gave an Answer, and afterwards several Letters and Messages passed between the faid Appellant and the faid Partners, who claimed to be intitled to have a Lease of all the Water-courses, Way-leaves and Privileges, contracted for in faid Heads of Agreement, for the Use of any Collieries had or possessed by them, during the Continuance of the Ninety-eight Years Term; and the faid Appellant insisting, that by the faid Heads of Agreement, such Liberties and Privileges only extended to such Collieries as the Partners were possessed of at the Time of entering into the faid Heads of Agreement, no Lease was prepared.

Bill, 7th June 1766.

The faid Appellant filed his Bill in the High Court of *Chancery* against the faid Respondents, the Earl of *Bute*, Lord *Ravenworth* and Mrs. *Bowes*, and thereby, among other Things, insisted, that according to the faid Heads of Agreement of the 17th of April 1727, the Liberties of Way-leave and Water-course, thereby agreed to be demised, ought to be confined in such Lease to such Coal-Mines and Collieries only, as the Lessees named in the faid Heads of Agreement, had at the Time of the making of the faid Agreement, and which the Respondents, as their Representatives, now have, and that such Construction of the faid Agreement was warranted by the Words and Import thereof, and was consistent and agreeable to the Intent and Meaning thereof; and thereby prayed (among other Things) to have the faid Heads of Agreement specifically performed and carried into Execution, the faid then Appellant submitting on his Part to perform such Part of the faid Agreement, as was incumbent on him to do; and that a Lease might be made under the Direction of the faid Court, pursuant to the faid Agreement; and such Restraints, Covenants and Provisoos, as therein before charged to be proper and necessary, or such other Restraints, Covenants and Provisoos as the faid Court should think fit, necessary and reasonable, might be inserted in such Lease, and that the Liberties of Way-leave and Water-course, to be demised by such Lease, might be restrained and confined by the faid Lease, to such Collieries as the Lessees named in the faid Heads of Agreement, had on the faid 17th of April 1727, or at the making of the faid Agreement, and which the Lessees to be named in such Lease now have, as standing in their Places, and to no other Collieries; and that all proper Parties might join in and execute such Lease, and that the Respondents might make the Appellant Satisfaction for the Coals led by them along faid Waggon-way laid on *South Moor*, and the Appellant's inclosed Lands in *Beamish* aforesaid, from either of faid Collieries called *Kipbill* and *Stanley*, in Proportion to the Benefit they had received from the Use of the faid Waggon-way, in leading such Coals; and that they, their Agents, Servants and Workmen might, by Injunction, be restrained from making, laying, continuing, or using any Drifts, Water-courses, or

Waggon-ways whatsoever, in, over, under, through or along any of the Lands, Grounds, Wastes or Moors of the Appellant in *Beamish*, alias *Beamish Park*, within the Manor, Boundaries and Territories of *Beamish*, alias *Beamish Park*, other than for the winning, working and getting of Coals forth and out of such Collieries as the Respondents, or those under whom they claim the Benefit of the said Agreement of the 17th of April 1727, had, and were possessed of at the Time of the making and executing the same, and for leading and conveying such Coals so won, worked and gotten forth, out of and from the same Collieries, only and for no other Purpose; and in particular, that they might be restrained by Injunction from leading Coals wrought in either of the said Collieries called *Stanley* or *Kiphill*, along the said Waggon-way or Ways, laid over the Appellant's Lands or Wastes in *Beamish*, alias *Beamish Park* aforesaid, without his Licence, and till they had made, or agreed to make him an adequate Satisfaction for leading the same; and that the Respondents might be restrained by Injunction from making, driving or using the Drift or Drifts, Water-course or Water-courses before-mentioned, from *Edge Pitt* on *South Moor*, in the Seam of Coal there called the *Brafs Thill Seam*, in, under or through *South Moor*, being Part of the Wastes of the Appellant's said Manor of *Beamish*, alias *Beamish Park*, into the Lands and Collieries in *Stanley* aforesaid; and also from making, driving or using the Drift or Drifts, Water-course or Water-courses before mentioned, from *Prince Pit* on *South Moor*, in and through *South Moor* aforesaid, into or towards the Lands and Collieries in *Shield Raw* aforesaid, purchased of *Ralph Blaxton*, for the Purpose of working the same Collieries in *Stanley* and *Shield Raw*, or either of them.

9th May 1768.
Answer of the Respondents, the
Earl of Bute, Lord Ravensworth
and Mrs. Bowes, to the Appellant's Bill.

The Respondents, the Earl of *Bute*, Lord *Ravensworth* and Mrs. *Bowes*, by their Answer to the said Bill (among other Things) admitted the said three Leases of the 1st of January 1723, and said, that no mention was made in them of a Barrier to be left against any adjoining Colliery, and insisted, that they had worked all the said Collieries, up to the extrem Boundary thereof, by virtue of the Powers contained in the said Leases, by and with the Approbation of the Viewers or Agents of the Appellant's Father, Brothers and himself, without ever having heard of the least Objection made thereto; and they admitted that the said *Parkhead Colliery*, adjoined the Appellant's Lands at *Beamish*, but insisted (and it is in Proof in the said Cause) that the same was not in 1727, incapable of being worked to Profit without a Water-course through the Appellant's Lands in *Beamish* or *Tanfield*, but that, on the contrary, the Water in the said *Parkhead Colliery* might have been drained out of the same, and the same might have worked to profit by a Drift or Water-course within the said *Parkhead Colliery*, and without any Water-course in the Appellant's Lands; and that *Hedley Fell* or *Moor Colliery*, *Hedley Colliery*, *Clavering's Cawsey Colliery*, *Dawson's Beckley* and *Dawson's Tanfield Collieries*, were also capable of being wrought without any Water-course through any of the Lands of the said *William Davison*; and that *Tanfield Easter Leigh Colliery* lay contiguous to Part of the said *William Davison's* Lands at *Tanfield*, and was incapable of being wrought but either by a Water-course through Part of said *William Davison's* Lands at *Tanfield*, or by a Fire Engine; and that such Water-course through Mr. *Davison's* Lands at *Tanfield*, could have been of no Use without a Water-course also through Mr. *Dawson's Tanfield* and *Beckley Collieries*, and *Clavering's Cawsey Colliery*; and that the Colliery in the Western Part of *Shield Raw* lay contiguous to Mr. *Davison's Moor*, South of *Beamish Burn*, and the upper main Coal Seam thereof was won by means of a Water-course in the said Colliery, and without any Water-course under Mr. *Davison's* Lands; and that such of the under Seams of that Colliery as were capable of being wrought by means of a Water-course, could not so conveniently be wrought by any Water-course but through some of Mr. *Davison's* Grounds; and that the said Lease of *Clavering's Cawsey Colliery* was surrendered in 1736, and that all the Coals which could be got out of the said Colliery, by the winning thereof, as in the said Answer mentioned, were then wrought away; and that the Lease of *Dawson's Tanfield* and *Beckley Collieries* was surrendered in 1748, being then worked out; and that the said Lease of *Tanfield Easter Leigh Colliery* was surrendered in 1736 for want of merchantable Coal.

And that all the Collieries which the said Partners had on the said 17th of April 1727, or were possessed of, for which Liberty of Way-leave or Water-course through any of the Lands of the said *William Davison* was necessary, might have been wrought out in the several Seams then known and deemed capable of being wrought to Profit, in less Time than 20 Years from the said 17th of April 1727; and that the said Respondents, and those under whom they claim, were respectively, from the Time of executing the said Heads of Agreement of the 17th of April 1727, intitled to, and from time to time had and enjoyed, and so were intended by the said *William Davison* to be intitled to and to enjoy Liberty of Way-leave and Water-course where necessary, in and through the Lands of the said *William Davison* therein mentioned, for all such Collieries as the said Lessees should thereafter become possessed of, during the Term of 98 Years, as well as for the Collieries they were then possessed of.

And that a Waggon-way was capable of being made for leading the Coals from the said *Tanfield Easter Leigh* and *Robinson's Shield Raw Collieries*, to the River *Tyne*, through *Tanfield Moor*; and that a Way-leave through *Beamish*, or *South Cawsey*, could have been of no Service to the Partners for leading Coals to the River *Tyne*, without a Way-leave also through the Lands called *Clavering's Cawsey*, or *Dawson's Tanfield* and *Beckley*; and that a Way-leave through Mr. *Davison's* Lands at *Tanfield* would not then have been of any Service to the said Partners for leading of Coals to the River *Tyne*, without a Way-leave also through *Dawson's Tanfield* and *Beckley*, and also through Part of *Clavering's Cawsey*.

And

And that the said *William Davison*, the Father, was well satisfied that the Rents in the said Heads of Agreement, mentioned to be reserved, were an ample Satisfaction for the Liberties mentioned to be granted thereby, and for the Damages which might be done to the Estate of the said *William Davison*, by extending the same Liberties to all such Coal-Mines and Collieries as the said Lessees might at any Time thereafter during the Term become possessed of, interested in or intitled unto; and that the said *William Davison* declared his Intent and Meaning was, that the said Liberties should extend to any other Collieries which the said Partners should at any Time during the Term become possessed of.

And that by means of the Water-course in *South Moor*, the Seams of Coal in the said *Davison's Kipbill Colliery* were won and laid dry; and that they then extended the said Water-course into the said *Davison's Kipbill Colliery*, which the Respondents insisted they had good Right to do by virtue of the said Heads of Agreement; and that the said Water-course was extended to the said *Davison's Kipbill Colliery* with the Privy of the Appellant, whose Agents from Time to Time attended and examined the Workings carried on by the said Partners, in the said Appellant's Collieries; and no Objection was then made by any of them to the Right of the said Partners to extend the said Water-course to the said *Davison's Kipbill Colliery*; and they said, that they did, in 1760, by the Aid of said Water-course, begin to work the said *Davison's Kipbill Colliery*, and have ever since wrought, and continue to work the same; and that the said *Davison's Kipbill Colliery*, and particularly the Brads Thill and Hard Coal Seams thereof, could not have been worked without the Aid of a Water-course under the Appellant's Lands, or of a Fire Engine; and that by extending the said Water-course into the said *Kipbill Colliery*, they let all, or most of the Water of the said *Kipbill Colliery* into the said Water-course; but that it could not be any Prejudice to the said *South Moor Colliery*, and particularly for that, the said Water did and must run off from the said *South Moor Colliery*, into the said *Beamish Burn*, or *River Team*; and that the said Partners had made the Appellant ample Satisfaction for the Use of the said Water-course, in winning the Coals of the said *Kipbill Colliery*, by Payment of the Rent according to the said Heads of Agreement; and that the Damage done to Mr. *Davison*, or his Lands, by making such Waggon-ways and Water-courses as aforesaid, and by the Use thereof, was very small; and that the said yearly Rent of 300*l.* was a large Compensation for such Liberties of Way-leave and Water-course, Damage and Injury.

And the said Respondents, by their Answer, said, they were willing that such Part of the said Heads of Agreement, as remained capable of being performed, should be carried into Execution, and that a Lease should be drawn and executed of such Liberties of Way-leave and Water-course, in, upon, through and under the Lands and Commons of *Beamish*, otherwise *Beamish Park* and *Pockerley*, or any of them, for 98 Years from the 1st of May 1728; but insisted, that such Liberties ought not to be confined in such Lease to such Coal-Mines and Collieries as the Lessees named in the said Heads of Agreement had at the Time of the executing the same, but that the said Liberties of Way-leave and Water-course should be extended, and were meant to be extended to any other Coal-Mines which the said Lessees should at any Time after, during the said Term of 98 Years, have.

And the Respondents insisted (and it is in proof in the Cause) that the Appellant's Agent consented and agreed, that the Barrier covenanted to be left by the said Lease, from the said *Dulcibella Davison*, should be wrought away; and also, that the Appellant, and those under whom he claimed, had received from the Respondents, and those under whom they claim, up to May 1766, 10,400*l.* for Liberty of Way-leave and Water-course; and that the Damage done to any of the Appellant's Lands by using such Liberty had been very inconsiderable; and they said, they believed (and it is in proof in the Cause) that the Monies which had been paid by them, and those under whom they claim, to the Appellant, and those under whom he claims, for Colliery Rents, and Way-leave and Water-course, up to May 1766, amounted to 38,000*l.* and upwards.

And the said Respondents insisted on the Validity of the said Heads of Agreement, and that the same were entered into by the said *William Davison*, after great Deliberation had by him, in regard to the Satisfaction which he reasonably deserved to have for the Liberties thereby agreed to be granted; and that the Liberties of Way-leave and Water-course to be demised by such Lease, should not be thereby restrained and confined to such Coal-Mines and Collieries as the Lessees named in the said Heads of Agreement, had upon the same 17th of April 1727, or at the time of making and Execution thereof, and which the Respondents now have as standing in their Places, and to no other Coal-mines and Collieries; and insisted that they ought not to make the Appellant any other Satisfaction than the Rent mentioned in the said Heads of Agreement, for any Coals which have been led by them along the said Waggon-way, made upon *South Moor*, and the inclosed Lands of the Appellant in *Beamish*, from the said *Kipbill* and *Stanley Collieries*.

The said Appellant, after putting in the first Answer of the said Respondents, the Earl of *Bute*, Lord *Ravenworth* and Mrs. *Bowes*, amended his Bill, and thereby made the Respondents, the Earl and Countess of *Strathmore* (who were not married till a considerable time after the said Appellant had filed his said original Bill) the Respondent, Lord *Glanis*, and Mrs. *Jane Bowes*, since deceased, Defendants therein, and all the Respondents, and the said *Jane Bowes*, put in their Answers to the said amended Bill.

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Appellant's Witnesses examined.

The said Appellant examined several Witnesses in the Cause, to prove the Manner of the Partners working the said several Collieries, and of their making and driving Drifts and Water-courses through the Appellant's Lands, and the Damages done to him thereby; and that some of the Collieries were incapable of being wrought, or being wrought to such Profit as they were wrought, without the Aid of the said Water-courses and Way-leaves, but did not enter into any Proof to shew that it was not the Intention of the Parties to the said Heads of Agreement, and particularly of the said William Davison the Father, that the Way-leaves, Water-courses and Privileges, thereby agreed to be demised for 98 Years, should not extend to any other Collieries than what the Partners were possessed of at the Date or Execution of the said Heads of Agreement.

Respondent's Witnesses examined.

The Respondents likewise examined Witnesses in the Cause, and particularly Mr. William Leaton, who was Agent for Mr. Bowes, before and in the Year 1727, and ever afterwards till his Death, and from that time for those claiming under him till lately; and Mr. Nicholas Walton, who was and is Agent for Lord Ravensworth; and they prove most of the Facts insisted upon by the Respondents Answers, and particularly, that they have respectively been conversant, and had Experience in the winning and working of Collieries, having been employed in the Direction of the Partnership Workings before and ever since the Date of the said Heads of Agreement, and give an Account of the Workings of the said several Collieries; and that, according to their Judgment and Belief, all the Collieries which the Partners had in 1727, or before December 1728, and for which Liberty of Way-leave and Water-course through any of the Lands or Grounds of the said William Davison was necessary, might have been wrought out in the several Seams of Coal then known and deemed capable of being wrought to Profit, in the Space of 20 Years from the 17th of April 1727; and that a Way-leave through the Lands and Grounds of Beamish, or South-Cawsey, could not have been of any Service whatsoever to the said Partners, without a Way-leave through Mr. Clavering's Lands called Cawsey, or Mr. Dawson's Lands called Tanfield and Beckley, for the Reasons mentioned in their Depositions; and that a Way-leave through the said Mr. Davison's Tanfield could not have been of any Service to the Partners, without a Way-leave through Dawson's Tanfield and Beckley, and also through Clavering's Cawsey or the one of them.

And the said Mr. Leaton deposed, that he became principal Agent to Mr. Bowes in 1727, for his Collieries, and from that time to the time of his Examination had been privy to all the Transactions of the said Partners, relating to their Partnership Collieries, and knew very well the Reasons why the said Heads of Agreement were not signed till the 24th December 1728; and that the said Partners had an Agreement by Lease from Mr. Clavering of Cawsey, of Way-leaves and Water-courses, for a Term of 30 Years from May-day 1724, which they, after the 17th April 1727, endeavoured to have enlarged for a Term of 97 Years, to correspond with the Term mentioned in the said Heads of Agreement, and thereupon entered into a Treaty with said Mr. Clavering for that Purpose, which was not compleated till 1st October 1728; and said, that it was for that Reason the Parties suspended signing the said Heads of Agreement, till after the Agreement with Mr. Clavering was compleated; and knew it was the determined Resolution of the Partners at that Time, that if they could not have had an Agreement with Mr. Clavering, to correspond with the Term in the said Heads of Agreement, they would not have signed such Heads of Agreement at all, and would have been contented with the Term of 27 Years they then had of Way-leaves and Water-courses from Mr. Clavering, as being more than sufficient for all the Collieries the Partners were then possessed of to the Westward of Beamish.

And the said Mr. Walton likewise deposed, that on the said 17th of April 1727, the said Partners had a subsisting Lease of Way-leaves and Water-courses, in and through Clavering's Cawsey Grounds, for a Term of thirty Years, from the 1st of May 1724; and that soon after entering into said Heads of Agreement, a Treaty was entered into for enlarging the Term with Mr. Clavering of Cawsey, of Way-leave and Water-courses, to correspond as to Duration of Time, with the said Heads of Agreement, and which Treaty was not compleated till the 1st of October 1728, and that he had been well informed, and believed that the Reasons why the said Heads of Agreement were not signed till said 24th of December 1728, was because the same was looked upon as of no Use, without having a Liberty of Way-leave and Water-course in, through, and under Mr. Clavering's Cawsey Grounds, to correspond with the Copartnership Articles.

And the said Mr. Leaton deposed, that after April 1727, and before October 1728, he went with Mr. Ralph Fetherston (then Agent to Mr. Wortley and Mr. Ord) to Beamish, to pay said William Davison his Colliery Rents, who then expressed himself to be very uneasy that the said Heads of Agreement were not executed, and said that he thought it hard upon him to be kept so long in Suspence, as he was giving an Opening for the Partners to the whole Country; that they might take or purchase all the Collieries they thought fit, to the Westward of his Estates, or to that Effect; and that in Answer to what Mr. Davison had so said, Mr. Fetherston told him, he must have Patience till the Partners had concluded an Agreement with Mr. Clavering of Cawsey, with whom they were then in Treaty for Way-leaves and Water-courses, in and through Cawsey Estate, for a Term to correspond with that intended to be taken from said Mr. Davison; and on that Occasion the said Mr. Fetherston further acquainted the said Mr. Davison, that there was only about Twenty-seven Years to go in the

the Term the Partnership then had with Mr. Clavering, which being sufficient for all the Collieries the Partners were then possessed of; yet to enable them to carry their Intentions of purchasing and taking other Collieries into Execution, it was necessary to have his the said Mr. Davison's Liberties, and those from Mr. Clavering to correspond, as the one without the other would not enable them to do it, or to that Purport or Effect; and that the said William Davison appeared to be then perfectly satisfied therewith, and did not make any Objection thereto; and the said Mr. Leaton deposed, that some Time after the said Partners had given Notice to the said Appellant to determine Pockerley Colliery (which is stated in the Bill, and admitted in the Answer to have been given the 22d of November 1758) the Appellant came to Gibside to dine with Mr. Bowes, and upon that Occasion the said Mr. Bowes sent for the said Deponent, and, in the Presence of the said Appellant, said to the said Deponent, "Mr. Davison tells me, that there is nothing subsisting between him and the Partners, under the Heads of Agreement of April 1727, but the Way-leaves and Water-courses, which should have been in a Lease," or to that Effect: And then the said Mr. Bowes said to the said Deponent, Mr. Leaton, "Why was there not a Lease?" To which he replied, "We (meaning himself and the other Agents for the Partners) had consulted Mr. Ord (now Lord Chief Baron of Scotland) some small Time after Mr. Davison came of Age, and that Mr. Ord had given it as his Opinion there was no Occasion for a Lease, and that the Partners might enjoy as they had done, under the Heads of Agreement as under a Lease," or to that Effect. And further deposed, that the said Appellant then said, "Mr. Bowes, what Mr. Leaton says, I believe to be the Case: And, to be short, Mr. Bowes, let the Partners pay me as they have done, and they shall enjoy as they have done," or to that Effect. And he deposed that the several Collieries called Clavering's Cawsey, Dawson's Beckley and Tanfield Collieries, Davison's Tanfield and Tanfield Easter Leigh Collieries, were all won by a Water-course made in Clavering's Cawsey, without the Aid and Assistance of the said Water-course on the North or North-west Side of Beamish Burn, excepting a small Part of Clavering's Cawsey and Dawson's Beckley, which excepted Parts were several Years afterwards won by a Communication made out of Hedley Moor Colliery.

And the said Mr. Leaton and Mr. Walton proved, that Bryan Davison, Agent for the said Appellant's Father, and for the said Dulcibella Davison, attended to view and inspect the Drifts and Coal-Works carried on by the Partners from Time to Time, and approved of what was done by them: And that in or about 1737, a Drift was drove from the Fold Pit in Tanfield Town-Street, through the Church-yard, into Parson's Close, to a Pit called Parson's Close Pit, and from thence into Dean's Close; and that thereby the Coal in both the said Closes was won and wrought by the said Partners; and that they believed the then Owner of the said Appellant's Estate, his Agents and Viewers all knew and were apprised that the said Drift was driven, and were privy to the driving thereof without objecting thereto; and that there was a Dispute between the Parishioners of Tanfield and the Parson about driving the said Drift through the Church-yard; and that the Owner of the said Appellant's Estate supported the Parson against the said Parishioners; and that in 1737 and 1739, the then Owner of the said Appellant's Estate knew that the said Partners did not become possessed of, or interested in the said Collieries in Parson's Close and Dean's Close, till after the Execution of the said Heads of Agreement.

And they deposed that the said Partners, in 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, and 1745, wrought and led Coals from the Broom-Pit in the said Appellant's Lands on the North-side of the Town of Tanfield, in all those Years, over the said Appellant's inclosed Lands on the North-side of the Town of Tanfield, to the Waste of the Town-Street of Tanfield, and over the said Waste to the said Appellant's inclosed Lands on the South-side of Tanfield: And that a Waggon-way Branch was made and laid by the said Partners in Parson's Close, from the Pit sunk therein, over Part of Dean's Close; and that the same was extended over the Waste of the Town-Street of Tanfield, till the same joined the Waggon-way Branch from the Broom Pit; and that the said Waggon-way Branch from the said Pit in Parson's Close, together with the said Waggon-way Branch, from the said Broom-Pit in the Waste of the said Town-Street of Tanfield, were made Use of for leading the Coals which were wrought from under said Dean's Close and Parson's Close respectively; and the said Waggon-way Branch was used in common for leading Coals, as aforesaid, with the same Waggons that were used in leading Coals from the Partnership Collieries in that Neighbourhood.

And the said Mr. Leaton and Walton proved that a Waggon-way Branch was made and laid by the said Partners, from the Pit in Parson's Close, over Part of Dean's Close, and extended over the Waste of Tanfield Town-Street, till it joined the Waggon-way Branch from Broom-Pit, both which were made use of for leading Coals wrought under Dean's Close and Parson's Close; and that the said Partners in 1744, began to make a Water-course in the Brads Thill Seam of Coal near Beamish Burn, on the South-side thereof; and that they made another Drift at a lower Level to a Part of the Coal-Mines at the East part of South Moor, and the same was so made not only for the winning and working South Moor Colliery, but also any other Colliery they then had, or should thereafter have during the 98 Years Term for which the Liberties were granted by the said Heads of Agreement; and that the said Water-course was extended into Kiphill Colliery with the Privy of the said Appellant, his Agents and Viewers, and they did not object thereto; and that Mr. Thomas Stokoe and Mr. William Brown, the said Appellant's Agents or Viewers, or one of them, attended from time

time to time when the said Water-course was so extended, and viewed and examined the Workings carried on by the said Partners; and that in 1759, Application was made by the said Partner's Agent to Mr. Green, the said Appellant's Agent, for Liberty of continuing the Waggon-way through the settled Estate in South-Cawsey, for leading their Coals from Kipbill, Stanley and Shield Raw Collieries, and that Mr. Green said it could not be permitted but on certain Terms and Conditions, whereupon a Treaty was entered into for that Purpose in order to save the Expence of altering the Waggon-way (which was computed at 1700*l.*) so as to pass through the Appellant's said unsettled Estate, to which there was no Objection; and upon a Meeting had between the Agents on both sides, the said Appellant's Agent offered to permit the said Partners to use the said then Waggon-way, on paying 200*l.* a Year over and above the 300*l.* a Year, then paid under the said Heads of Agreement, with Restrictions which could not be complied with, and thereupon the Treaty broke off, and the said Partners thereupon determined to change the said Waggon-way, and lay a new one over Part of the said Appellant's Estate at Beamish; and that upon changing the said Way, the said Mr. Green attended to see the setting out of the new Waggon-way, to shew what was settled Estate and what was Part of Beamish Moor; and they proved that the said Appellant, and those under whom he claimed, had received up to May 1766, for Colliery Rents, Way-leaves and Water-courses, 38,214*l.* 4*s.* 1*d.* and Mr. Leaton deposed, that to the best of his Judgment and Belief the Damage done to said Appellant's Lands by using the Liberty of Way-leave and Water-course, did not in the whole to May 1766, amount to 100*l.*

And there are several other Circumstances proved in the Cause which tend to shew that it was the Intention of the said William Davison and of the said then Partners at the Date and Execution of the said Heads of Agreement, that the Way-leaves, Water-courses and Privileges thereby agreed to be demised for the said Term of 98 Years, were to extend not only to all Collieries which the said Partners then had, but also to all such Collieries as they or their Representatives should afterwards have during the said Term.

Decree 9th December 1773,
which is appealed against.

The Cause came on to be heard before the Right Honourable the Lord High Chancellor the 7th, 8th and 9th of December 1773, when his Lordship pronounced his Decree therein, and Declared, That according to the true Construction of the Heads of an Agreement, bearing Date the 17th of April 1727, the Lessees Right of Way-leave and Water-course extended to all the Collieries and Coal-mines in their Possession at that Time, or which they should afterwards be possessed of during the Term; And did Order and Decree that it should be referred to Mr. Montagu, One of the Masters of the said Court, to approve of a Lease pursuant to the said Heads of an Agreement, with Covenants usual in such Leases, and state the same to the Court; of which Decree Minutes were taken by the Register of the said Court accordingly.

The Respondents procured from the Register of the said Court a Copy of the said Minutes, taken by him of the Decree so pronounced by the said Lord High Chancellor, and finding thereby that no Directions appeared to be given for entering their Proofs and Exhibits as read, although they had examined Witnesses and proved several Exhibits material to the Points in Question between the Parties, the said Respondents on the 10th of January 1774, preferred their Petition to the said Lord High Chancellor, stating (among other Things) that they had several Proofs taken in the said Cause, and several Exhibits to be read, which they found by the Register's Minutes were not entered as read, and that there was no Direction given for entering the same as read, which they were advised was very material to be done; and that they found by the said Minutes that the Master was to approve of a Lease pursuant to the said Heads of an Agreement, with Covenants usual in such Leases, but that they apprehended that the Directions should have been, that the Master should approve of a Lease pursuant to the said Heads of an Agreement, without any special Directions touching the Covenants to be contained in such Lease, the said Heads of Agreement having ascertained the Covenants to be therein contained; and they therefore prayed his Lordship that the Minutes might be rectified in the Particulars before-mentioned, whereupon his Lordship was pleased to order that all Parties concerned should attend him on the Matter of the said Petition on the then next Day of Petitions.

19th Jan. 1774.
Appeal against the said Decree.

Order 21st of Jan. 1774, which
is also appealed against.

Before the Matter of the said Petition came on to be heard, and after the Appellant had Notice thereof, and whilst the said Decree rested in Minutes, and before the same were drawn up into the Form of a Decree (that is to say) on the 19th Day of January 1774, the Appellant presented his Petition and Appeal to your Lordships against the said Decree so resting in Minutes as afore said; and on the 21st Day of January 1774, the said Petition came on to be heard before his Lordship, who, after hearing Council on both Sides, was pleased to Order that the Evidence on both Sides should be entered as read; and that that Part of the Minutes which directed the Master to approve of a Lease pursuant to the said Heads of an Agreement, with Covenants usual in such Leases, should be rectified, and be as follows; That the Master should approve of a Lease pursuant to the said Heads of an Agreement, with Covenants usual or proper in such Leases at the Time the said Heads of an Agreement bear Date.

Before

25th January 1774.
Appeal against said Order of 21st
same January.

Before the Order made on hearing the said Petition was drawn up by the Register, and whilst the same rested in Minutes, viz. on the 25th of the same January, the said Appellant presented his Petition and Appeal to your Lordships against Part only of the said last-mentioned Order, viz. the entering the said Evidence as read.

Orders 1st March 1774 for reviv-
ing both Appeals.

The Appellant Mr. Davison then died, and since his Death, Sir John Eden Bart. Robert Eden Esquire, Frederick Eden, Son of the said Robert Eden, by the said Robert Eden his Father and next Friend, Jonathan Davison, and George Hartley, Esquires, preferred their Petitions to your Lordships to have both the said Appeals revived, which are by two several Orders accordingly revived.

Decree, as rectified.

The Order for rectifying the Minutes of the Decree hath since been drawn up and entered, and the Decree hath also been since drawn up according to the Minutes, so rectified by the said Order, which Decree is as follows, viz. Upon Debate of the Matter, and on hearing the Heads of Agreement marked Letter (A), dated the 17th Day of April 1727: An Indenture of Lease dated the 1st Day of January 1723: Another Lease dated the same Day: Another Lease dated the same Day: An Indenture of Lease executed by Thomas Dawson, dated the 6th Day of January 1722: A cancelled Indenture between Ralph Clavering, Gentleman, of the one Part, and Charles Atkinson, of the other Part, dated the 31st Day of October 1724; a cancelled Indenture between Ralph Clavering, of the one Part, and Charles Atkinson, of the other Part, dated the 16th Day of October 1724: Articles of Agreement executed by Sidney Wortley, Edward Wortley, Thomas Ord, Henry Liddell, George Liddell, George Bowes, William Cotsworth, Jane Liddell, George Gray, and Charles Sanderson, dated the 27th Day of June 1726: Articles of Agreement executed by Sidney Wortley, Edward Wortley, Thomas Ord, George Liddell, George Bowes, and William Cotsworth, dated the 27th Day of June 1726: An Indenture executed by Sir Francis Clavering, dated the 24th Day of February 1726: An Indenture executed by Gilbert Spearman, dated the 3d Day of March 1726: Articles of Agreement signed S Wortley, Geo Bowes, Tho Ord, Tho Wilkinson pro George Pitt, Geo Liddell, Robt Cotsworth, Edw Wortley, George Pitt, dated the 9th Day of March, 1726: Articles of Agreement executed by Thomas Dawson and Ralph Fetherstonbalgh, dated the 1st Day of June 1728: An Indenture, executed by Ralph Clavering, Charles Atkinson, Edward Wortley, George Liddell, George Bowes and Thomas Ord, dated the 1st Day of October 1728: A Letter, signed Will Davison, directed to Mr. Ralph Fetherston, dated the 23d of December 1728: An Indenture, executed by Henry Liddell, Edward Wortley, George Bowes, Thomas Ord, Elizabeth Cotsworth, Henry Ellison and Hannab Ellison, dated the 17th Day of September 1729: Indentures of Lease and Release, executed by John Hedworth, dated the 1st and 2d Days of December 1729: Indentures of Lease and Release, dated the 24th and 25th Days of June 1734: The Lease executed by William Blackston, Ralph Conyers and John Dunn; and the Release, executed by William Blackston, Ralph Conyers, John Dunn, Jane Conyers, Anthony Blackston, John Dunn Junior, Mary Dunn, Jonathan Bowser, Elizabeth Blackston and Michael Blackston: An Indenture, executed by Dulcibella Davison, dated the 23d Day of October 1734: A Memorandum of an Agreement, signed Na Wetherell, Rob Ellison, W Leaton, Ralph Fetherston, dated the 4th Day of December 1741; and a Confirmation thereof subscribed hereto, signed Morton Davison: An Indenture, executed by Sir Thomas Clavering, dated the 4th Day of July 1748: An Indenture, executed by Thomas Davison, dated the 24th Day of December 1753: An Indenture, executed by Henry Widdrington, dated the 8th Day of January 1754: A Paper Writing, marked No. 1: An Indenture, dated the 10th of December 1714: A Paper Writing, marked (M): Three other Paper Writings, marked O. P. Q: An Indenture, dated the 20th of February 1734: The Answer of the Defendants, the Earl of Bute, Lord Ravensworth and Mrs. Bowes, and the Proofs taken in this Cause read, and what was alledged by the Counsel on both Sides; his Lordship doth Declare, that according to the true Construction of the Heads of an Agreement, bearing Date the 17th Day of April 1727, The Lessees Right of Way-leave and Water-course extends to all the Collieries and Coal-mines in their Possession at that Time, or which they should afterwards be possessed of during the Term, and doth Order and Decree that it be referred to Mr. Montagu, One of the Masters of this Court, to approve of a Lease pursuant to the said Heads of an Agreement, with Covenants usual or proper in such Leases at the Time the said Heads of an Agreement bears Date, and state the same to the Court: And his Lordship doth reserve the Consideration of Costs, and all further Directions, till after the said Master shall have made his Report, and any of the Parties are to be at Liberty to apply to this Court as there shall be Occasion.

The Respondents humbly hope that the said Decree shall be affirmed, and that the said Petitions and Appeals shall be dismissed with Costs, for the following (among other)

R E A S O N S.

REASONS upon the Appeal of the 19th Jan. 1774.

First, THE general Question between the Parties is, Whether the Heads of Agreement of the 17th of April 1727, imports a Contract for granting a Lease of Way-leaves and Water-courses for carrying Coals from such Collieries as the Partners were intitled to at the Date of the Articles only, or from such as they were then, and should be intitled to, during the Term of 98 Years, agreed to be Granted.

THE Descriptions in the Articles of the Collieries, to which the Ways and Water-courses are to be Easements, are described throughout the Articles in the same Form of Words; viz. *any of their Coal-mines or Collieries, or any of the Coal-mines or Collieries of the Lessees.*

A Contract for an Easement during a certain Term of Years, to be used in Respect of any Species of Property of the Lessee, imports such Property as he shall be possessed of during the Term: As a Grant of Common of Pasture for a Man's Cattle for a Term of Years, of itself imports, to be for such Cattle as shall be his during the Term, and not to be restrained to such Cattle only as he is possessed of at the Time of the Grant.

THE Agreement contains two distinct Parts.

THE first contracts to grant a Lease for 21 Years, to be extended by Act of Parliament to 98 Years, of Way-leaves and Water-courses *over the settled Estate*, at a Rent of 100*l.* a Year; the latter Part contracts to grant a Lease for 98 Years of Way-leaves and Water-courses *over the unsettled Estates*, at the Rent of a Pepper-corn for the first 10 Years, 100*l.* a Year for the next 5 Years, and 200*l.* *per Annum* for the Remainder of the Term, with a Proviso, that if within the first 15 Years, the Lessees should lead any Coals over any of the Estates of the said William Davison, *either settled or unsettled, from any other Collieries than those which they then held by Lease from the Lessor*, they should from thenceforth pay the Rent of 200*l.* a Year: It is therefore clear, the Parties intended, that during the whole Term the Lessees should have a Right on paying 200*l.* a Year, *of leading Coals from any other Collieries besides those held of the Lessor.* And no Distinction is made between Collieries they were then possessed of, and Collieries they should afterwards acquire; although this Part of the Agreement called for such Distinction to be made if any had been intended.

THIS Construction of the Agreement makes the whole consistent, and agrees with the Expressions used in every Part of the Articles.

Secondly, THE Articles which created the Partnership, and were dated in 1726, were to continue for 99 Years; the Contract with Mr. Davison made in 1727, was for 98 Years, which plainly shews it was the Intention of the Partners that their Contract with Mr. Davison should have a Reference to their Articles of Partnership, one Object of which is expressed to be for the purchasing, taking and working of Collieries during the Term; so that to suppose that the Contract with Mr. Davison referred only to Collieries which they were then possessed of, is to suppose they made a Contract inconsistent with the whole Design of their Partnership.

AN Agreement so confined, made by a Partnership who had in View the taking and increasing their Number of Collieries throughout the Term, would have been weak and improvident in the then Situation of the Partnership, as the Collieries of which they were then possessed, and for which they wanted any Way-leaves or Water-courses over or thorough the Grounds of the Appellant, were such as might have been worked out in 20 Years.

Thirdly, FOR that the Partners in the Articles of the 26th of June 1726, entered into the Heads of Agreement of the 17th April 1727, with a View of winning and working the Collieries that were to the Rise of the Appellant's Estates, viz. *to the Southward and Westward, and which were not then in their Possession*; but as the said Right of Way-leaves and Water-courses through and over the Appellant's Grounds, could not be of any Use or Service to the said Partners without the Liberty through, over and along the Grounds of both Mr. Clavering and Mr. Dawson; therefore before they signed the Heads of Agreement of the 17th of April 1727, they agreed with the said Mr. Clavering and Mr. Dawson respectively, for the like Liberty of Way-leaves and Water-courses; and the said Agreements were carried into Execution by Leases, dated the 1st June 1728, and 1st of October 1728, and the Terms granted by the said Leases correspond exactly in Point of Duration with the said Partnership Articles of the 26th of June 1726, and

and the Liberties thereby granted *are for all Collieries the said Partners then had or might have during the said Term*; and for this Reason the said Partners postponed Signing the said Heads of Agreement till the 24th of December 1728.

Fourthly, THAT it was always understood that the Agreement referred to any Collieries, which during the Term of 98 Years, should belong to the Lessees, is evident also from the Conduct of Mr. Davison's Family; *for that during the Term of 21 Years which subsisted in the settled Estates, the Lessees had used the Way-leaves both on the settled and unsettled Estates for the Use of Collieries which they acquired after the Articles without Interruption or Doubt of any of the Parties, and some Time after the Expiration of the 21 Years, by which the Right of Way-leaves and Water-courses ceased in the settled Estates (William Davison having died before an Act of Parliament was obtained to extend that Term to 98 Years) the Appellant having objected to the continuing the Waggon-way at all over the settled Estates except for his own Colliery of South-Moor; and the Appellant and the Partners disagreeing in the Year 1759, as to the Continuance of the said Ways over the settled Estate, it was determined by the Partners to alter their Waggon-way by carrying it in a crooked Line upon the unsettled Lands, and going round the settled Lands instead of a-cross them, upon which Occasion the Appellant's Agent attended the setting out the Way, to Point out to the Lessees, and to distinguish the unsettled from the settled Estates; and from that Time the new Way was used by the Lessees for their Collieries indiscriminately, without any Objection till the Year 1766; and all this with the Knowledge of the Appellant and his Brother before him, which Acquiescence for a Course of 39 Years, is the fullest Proof of the Sense of Mr. Davison's Family, that the Articles extended to all Collieries belonging to the Partners without Distinction.*

REASONS upon the Appeal of the 25th of Jan. 1774.

First, FOR that it is, and always has been, the Practice of the Court of Chancery, to receive Petitions from either Side to rectify the Minutes of any Order or Decree pronounced by the Court, whilst the same rested in Minutes, without being drawn up by the Register in Form of a Decree or Order; and to vary and alter such Minutes, if the said Court should see sufficient Cause, at any Time before such Order or Decree be regularly passed by the Register and entered.

Secondly, FOR that while the said Decree rested in Minutes, it was to be considered as imperfect, and liable to be altered at any Time by Application to the Lord Chancellor, in order to make the same perfect and agreeable to his Lordship's Opinion before the same was drawn up into a Decree: For if Appeals from imperfect Minutes, was to prevent any Alteration in them, it would subject Parties to great Inconveniencies, and would debar the Lord Chancellor from rectifying his Minutes, though the same might arise from mere Inaccuracies in penning the said Minutes, or from the Register's not being exact in taking down the Minutes,

Thirdly, THE Direction for entering the Evidence on both Sides as read, was just and necessary. In the Course of the Hearing the written Evidence on the Part of the Respondents, to shew the several Leases possessed by the Partners on the 17th April 1727, and the Leases acquired after that Period had been stated to the Court, and admitted without being read; but no Notice was taken of this in the Minutes; the Parole Evidence had not been read as the Opinion of the Court was given in the Respondent's Favour upon the Agreement itself; And it was unnecessary to read Proofs in Confirmation of that Opinion; but the Evidence itself was competent and proper, not only as it explains the View with which the Parties entered into the said Heads of Agreement of the 17th April 1727, but also proves by the Acts of the Appellant, his Brother and his Father, as they respectively became Owners of the Estates for a great Number of Years, that they as well as the Respondents understood that the Agreement extended to Collieries acquired since the Signing the Articles of the 17th April 1727.

Fourthly, IT is equally fair to both Parties, when a Cause is carried to a superior Judicature by Appeal, that the Cause should be fully before the Appellate Jurisdiction, and either Party at Liberty to resort to the Evidence: This is so generally understood that it is a common Practice upon a Hearing, where there is a Probability of Appeal, to enter all the Evidence on both Sides as read; and the Appellant himself has Entered Evidence under the very Order from which he now appeals to your Lordships.

AL. WEDDERBURN.
R. PERRY.
JOHN MADOCKS:
JOHN ORD.

The SCHEDULES referred to by the CASE.

Schedule No. 1, being an Account of the Collieries which the Partners had on 17th of April 1727.

Clavering's Beckley	}	Held by Lease from Sir Francis Clavering for 11 Years, which determined 2d February 1737.
Andrew's House		
Byer Moor		
Clavering's Cawley	}	Held by Lease from Mr. Clavering for 31 Years from Martinmas 1723, which was surrendered in 1736,—the Coal being wrought out, which had been won by the then Water-course made in Mr. Clavering's Cawley Grounds.
Beamish Colliery		
Dawson's Beckley and Tanfield	}	In the inclosed Lands held by Lease from the Appellant's Father for 41 Years from Martinmas 1723,—determined by Notice 11th November 1745.
Davison's Tanfield, and South Cawley		
Hedley Fell, or Moor	}	Held by Lease from Thomas Dawson, Esquire; from Martinmas 1723, which was determined in 1748,—the Coal being wrought out.
Hedley		
Lancaster Moor	}	Held by Lease from the Appellant's Father from Martinmas 1723, for 41 Years, if he should so long live, which determined by his Death 27th August 1734.
Parkhead		
Pockerley	}	The Estate of Lord Ravensworth and Mr. Wortley.
Robinson's Shield-Raw		
South-Moor	}	The Estate of Lord Ravensworth and the late Mr. Bowes.
Tanfield Easter-Leigh		
	}	Held by Lease from Mr. Harrison, which determined Michaelmas 1745.
	}	The Estate of the late Mr. Bowes, and Mr. Rogers, but the Colliery being held by them in Moities, on the 17th of April 1727, the Respondents were only possessed of Mr. Bowes's Moiety.
	}	Held by Heads of Agreement for 41 Years from 17th April 1727; which was never wrought, but a Dead-rent paid till determined by Notice 22d November 1759.
	}	The Estate of the late Mr. Bowes and Mr. Scaeffe, but the Colliery being held by them in Moities on the 17th of April 1727, the Respondents were only possessed of Mr. Bowes's Moiety.
	}	Held by Lease from Mr. Harrison, which determined Michaelmas 1745.
	}	The Estate of the late Mr. Bowes, and Mr. Rogers, but the Colliery being held by them in Moities, on the 17th of April 1727, the Respondents were only possessed of Mr. Bowes's Moiety.
	}	Held by Lease from the Appellant's Father for 41 Years from 1st of January 1723, which expired 1st January 1764.
	}	Held by Lease from Martinmas 1726, which was determined in 1736, for want of Merchantable Coal.

Schedule No. 2, being an Account of Collieries acquired by the Partners after 17th April 1727.

Blackstone's Shield-Raw - Purchased by Defendants in 1734.

Clavering's Beckley	}	Held by Lease from Sir Francis Clavering, Baronet, for 7 Years from Candlemas 1737, and that Term being expired, the same was afterwards retaken, and held by Lease from Sir Thomas Clavering for 14 Years from 25th December 1747.
and Andrew's House		
Dean's Close	}	Purchased by the Partners of Mr. Hedworth in 1729.
Kiphill		
Parson's Close	}	Held by Lease from Mr. Dawson for 63 Years.
Stanley		
Davison's Tanfield	}	Taken by the Partners of Mr. Wilson, the Minister of Tanfield, in 1735-6, and held by them as Tenants at Will.
	}	Held by Lease from Henry Widdrington Esq; for 63 Years from May-day 1754.
	}	Held by Lease from Mrs. Dulcibella Davison for 7 Years from 29th December 1734, and then by an Agreement with Nathaniel Weatherell, and approved by the Appellant, till 1745, when it was determined by Notice.
Mr. Scafe's Moiety of Shield Raw	}	Held by Lease from Mrs. Dulcibella Davison for 7 Years from 29th December 1734, and then by an Agreement with Nathaniel Weatherell, and approved by the Appellant, till 1745, when it was determined by Notice.
Mr. Rogers's Moiety of Parkhead		
Clavering's Cawley	}	Held by Lease from Mr. William Scafe for the Term of 31 Years, from 11th November 1732.
	}	Held by Parol Agreement from the Committee of his Estate from the Year 1738, till the same was wrought out.
	}	Held by Lease from Mr. Clavering for the Term of 9 Years, from May-day 1740, and was continued under that Agreement till the Colliery was wrought out.



Die Jovis 22.^o Decem.^{bris} 1774.

Ordered and Adjudged That the Order of the Court of Chancery of the 21.st of Janry 1774 Complain'd of in the Appeal presented the 25.th of January 1774 so far as it directs the Evidence on both Sides to be tried as Read, be Reversed, and that the Respond.^t to the said Appeal be at liberty to apply to the said Court to Re-hear the Cause, And it is further Ordered That Sir John Eden Bar.^t and others Appell.^{ts} in another Appeal between the same Parties Presented on the 19.th of January 1774, be at Liberty to Withdraw their said appeal with.^o Prejudice.

Dec 23 1871

A circular postmark from London, dated 18 DEC 44. The text "LONDON" is at the top, "18 DEC 44" is at the bottom, and "45" is on the right side. The center features a royal coat of arms.



JOHN L. LORDE